

DEPARTMENT OF ~~COMMUNITY~~ **HEALTH AND HUMAN SERVICES**

~~HEALTH POLICY AND REGULATION ADMINISTRATION POLICY,~~
PLANNING AND LEGISLATIVE ADMINISTRATION

CERTIFICATE OF NEED

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under Section 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the department of ~~public~~ **health and human services** by sections 2226, ~~2233~~**2333**, and 22255 of 1978 PA 368, MCL 333.2226, 333.2333, and 333.22255, and Executive Reorganization Order No. 1996-1, MCL 330.101.)

R 325.9101, R 325.9215, and R 325.9413 of the Michigan Administrative Code are amended as follows:

R 325.9101 Definitions; A to D.

Rule 101. As used in these rules:

(a) "Applicant" means the person, as defined in section 1106 of the code, or a governmental entity, as defined in section 1104 of the code, applying for a certificate of need and authorized to conduct business in this state.

(b) "Application" means the department forms, in electronic or in paper format, that are currently in effect at the time the application is submitted, and any information or documentation prespecified in the forms to be provided as attachments or supplements

(c) "Appropriate regional certificate of need review agency" means the regional certificate of need review agency that the department designates under section 22226 of the code that is within the geographical review area where an applicant proposes to locate a project.

(d) "Bureau" means the administrative unit of the department that the director designates as responsible for the certificate of need program.

(e) "Code" means 1978 PA 368, MCL 333.1101 to **333.25211**.

(f) "Comparative group" means the applications ~~which~~ **that** have been grouped for the same type of project in the same planning area that are being reviewed comparatively according to these rules.

(g) "Completed application," except as provided in R 325.9229, means the application submitted by the applicant, including any additional information provided by the applicant on or before the date the application is deemed complete under R 325.9201(3).

(h) "Completed project" means a project that the department has determined both of the following:

(i) That all activities and construction necessary to offer the services, beds, facilities, or equipment approved by a certificate of need have been executed in compliance with the terms and conditions of the certificate of need.

June 9, 2016

(ii) That the project has been implemented as defined in R 325.9103(b).

(i) "Department" means the Michigan department of ~~community~~ health **and human services**.

(j) "Director" means the director of the Michigan department of ~~community~~ health **and human services**.

R 325.9215 Amendments to applications before proposed decision is issued by the bureau.

Rule 215. (1) An applicant shall not amend an application subject to a comparative review after the designated application date established under R 325.9123, except to the extent that additional information is requested by the department to make the application complete under R 325.9201 or R 325.9229(6) or as provided for in R 325.9207(2)(b). A person desiring to amend an application may do any of the following:

(a) Withdraw the amendment.

(b) Have the project considered under a new application on a subsequent designated application date.

(c) If the application is subject to comparative review, amend the application if all applicants in the comparative group agree to allow an amendment, if the amendment does not increase the scope of the project.

(2) An amendment **to an application before a proposed decision is issued by the bureau** shall not change the person, the site of a proposed health facility or covered clinical service, or increase the number of beds or covered clinical services proposed in a certificate of need.

(3) A request to amend an application shall be accompanied by the required fee if the amendment request results in higher costs under the fee schedule in section 20161 of the code for the proposed project that would have required a higher application fee when submitted originally. An amendment not accompanied by the required fee will not be processed by the department until the required fee is received.

(4) An application that is not subject to comparative review may be amended by the applicant up to 30 days in advance of the proposed decision date established by these rules. If the department, with the advice of the appropriate regional certificate of need review agency, determines that the proposed amendment substantially changes the original application and that additional review by the department and the regional certificate of need review agency is required to adequately evaluate the proposal according to the code and these rules, the department shall require, as a condition of the amendment, that the applicant agree to extend the date for proposed decision as required to permit the additional review.

(5) The department may consider new or revised information submitted by an applicant for an application that is not being reviewed on a comparative basis, within 30 days of the proposed decision date or at any time after the proposed decision and before a final decision is issued, if an applicant requests an extension to the proposed or final decision date sufficient to allow the department and the appropriate regional certificate review agency, up to 30 days to review the new or revised information. The department may request from an applicant a longer extension, if **it is** necessary to review new or revised information. The applicant shall also simultaneously submit the new or revised

information to the appropriate regional certificate of need review agency. The department shall make the new or revised information available to the public upon request.

(6) If an applicant for a project not originally subject to comparative review proposes to amend the application in such a way as to make it subject to a comparative review, the bureau shall notify the applicant of the need for comparative review. The applicant may then either withdraw the amendment or have the project considered under a new application on a subsequent designated application date.

R 325.9413 Amendments to approved certificates of need.

Rule 413. (1) A recipient may request the department to amend an approved certificate of need if the project is not a completed project. After consulting with the appropriate regional certificate of need review agency, the department shall decide whether the amendment requires another review. The department's decision to require another review or deny a request is not subject to the administrative hearing process **in the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.**

(2) A request to amend a certificate of need shall be accompanied by the required fee if the amendment request results in higher costs under the fee schedule in section 21601 of the code for the proposed project that would have required a higher fee when submitted originally. An amendment not accompanied by the required fee will not be processed by the department until the required fee is received. ~~A certificate of need issued after a comparative review cannot be amended. An amendment cannot change the site of an approved health facility or covered clinical service or increase the number of beds or covered clinical services approved in a certificate of need. Unless waived by the department, amendments to a certificate of need are subject to the same conditions and stipulations imposed on the original certificate and any new conditions and stipulations imposed on the amendment.~~

(3) A certificate of need issued after a comparative review shall not be amended to change any of the following:

- (a) The scope of the project.**
- (b) An increase in the cost of the project.**
- (c) The method of financing the project.**

(d) The terms of financing the project, except where a recipient demonstrates to the satisfaction of the department, that an amendment to change the method or terms of financing offers a less costly alternative to the approved method or terms of financing the project.

~~(34) The department may allow an amendment requesting a change in the method and terms of financing, site of an approved capital expenditures (e.g. medical equipment), or other costs only in those instances where the recipient is able to demonstrate that the need for amendment arises from circumstances beyond its control or the amendment offers a better alternative as determined by the department with the advice of the appropriate regional certificate of need review agency~~ **health facility before completion of the project if both of the following criteria are met:**

(a) Sufficient evidence is submitted and deemed reasonable by the bureau detailing an event that could not be reasonably foreseen that prevents the completion of an approved project at the approved site. The event that could not be reasonably foreseen must have occurred after the approval of the project.

(b) The site proposed in the amendment shall meet the exact criteria and scoring, if applicable, as the previously approved site and any new criteria in updated standards.

(45) An amendment for an approved health facility or covered clinical service shall not modify the person, the building, or purpose of the property, or the scope of the project. An amendment for an approved health facility or covered clinical service shall not increase the number of beds or clinical services approved in a certificate of need. An amendment cannot change the site of an approved covered clinical service for a nonlicensed facility.

(36) The department may allow an amendment requesting a change in the method and terms of financing, approved capital expenditures, **for example**, medical equipment, or other costs only in those instances where the recipient is able to demonstrate that the need for amendment arises from circumstances beyond its control or the amendment offers a better alternative as determined by the department with the advice of the appropriate regional certificate of need review agency.

(57) The department may request additional information regarding a proposed amendment under the time periods in R 325.9201(3).

(68) The review period for a request to amend an approved certificate of need shall not be longer than the original review period for the application. When reviewing a proposed amendment to an approved certificate of need, the bureau shall use the standards in effect at the time of the original approval of the certificate of need **that the amendment is approved.**

(79) The department may grant an extension to the date a decision will be issued for an amendment upon written request from a recipient. An extension may be granted for not less than 30 days, but not more than 90 days.

(10) Unless waived by the department, amendments to a certificate of need are subject to the same conditions and stipulations imposed on the original certificate and any new conditions and stipulations imposed on the amendment.